

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**JERRY BLANEY, #1519297,
Petitioner,**

V.

3:09-CV-1572-O

**RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Div.,
Respondent.**

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

United States Magistrate Judge William F. Sanderson, Jr., made findings, conclusions and a recommendation in this case on October 13, 2009 (Doc. # 3). Plaintiff filed objections on October 27, 2009 (Doc. # 5). The District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made and finds as follows:

A deficiency order was filed in this case on August 31, 2009 requiring Petitioner to submit his pleadings on the appropriate form by September 30, 2009. *See* Order dated August 31, 2009 (Doc. #2). The order included a notification that failure to comply could result in dismissal of the petition for failure to prosecute. *Id.* As of October 13, 2009, after Petitioner failed to either comply with the deficiency order or seek an extension of time to do so, U.S. Magistrate Judge Sanderson recommended dismissing the petition for failure to prosecute. Findings, Conclusions and Recommendation of the United States Magistrate Judge (Doc. #3).

After the recommendation was made, Petitioner filed written objections to the recommendation. Written Objection (Doc. #5) filed October 27, 2009. Specifically, Petitioner

objects to dismissal of the petition for failure to prosecute, stating that he received no notice of the August 31 deficiency order. *Id.* The case docket does not contain evidence to the contrary, such as an entry showing proof that the order was mailed to Petitioner. Given Petitioner's objection and the lack of a docket entry, Petitioner cannot be said to have received notice of the deficiency order. Therefore, the Court should not dismiss the petition at this time.

On October 27, 2009, Petitioner filed an Amended Petition on the appropriate form (Doc. # 4), and therefore appears to have cured the deficiency.

In light of this new information, the Court declines to adopt the October 13, 2009 Findings, Conclusions, and Recommendation and refers the case to U.S. Magistrate Judge Sanderson for determination or recommendation as appropriate under applicable law.

SO ORDERED this **17th** day of **November, 2009**.



Reed O'Connor
UNITED STATES DISTRICT JUDGE